

RECEIVED
AUG 8 1997

FILED
CHARLOTTE, N.C.

AUG 7 1997

U.S. DISTRICT COURT
W. DIST. OF N.C.

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

UNITED STATES OF AMERICA)

DOCKET NO. 3:97CR23-P

v.)

NOTICE OF INTENT TO
SEEK THE DEATH PENALTY

AQUILIA MARCIVICCI BARNETTE)
_____)

COMES NOW, the United States of America, pursuant to 18 U.S.C. § 3593(a), by and through its undersigned counsel, and notifies the Court and the defendant in the above-captioned case that the Government believes the circumstances of the offenses charged in Counts Seven, Eight, and Eleven are such that, in the event of conviction, a sentence of death is justified under Chapter 228 (Sections 3591 through 3598) of Title 18 of the United States Code, and that the Government will seek a sentence of death for each of these offenses: Count Seven, carjacking resulting in the death of Donald Lee Allen, in violation of 18 U.S.C. § 2119(3); Count Eight, use and carrying a firearm in a carjacking resulting in death, in violation of 18 U.S.C. § 924(c) and (j)¹; and Count Eleven, use and carrying a firearm during a crime of violence which resulted in the death of Robin Williams, in violation of 18 U.S.C. § 924(c) and (j), 18 U.S.C. § 2261(a)(1) and (b).

I. As to the murder of Donald Lee Allen, as charged in Counts Seven and Eight, the Government proposes to prove the following factors as justifying a sentence of death.

¹Counts Eight and Eleven charge a violation of Section 924(i)2(1). That section has been recodified as Section 924(j) and will be referenced as such in this Notice.

- A. Statutory Proportionality Factors Enumerated Under 18 U.S.C. § 3591(a)(2)(A)-(D).**
1. **INTENTIONAL KILLING.** The defendant intentionally killed Donald Lee Allen. Section 3591(a)(2)(A).
 2. **INTENTIONAL INFLICTION OF SERIOUS BODILY INJURY.** The defendant intentionally inflicted serious bodily injury that resulted in the death of Donald Lee Allen. Section 3591(a)(2)(B).
 3. **INTENTIONAL ACTS TO TAKE LIFE OR USE LETHAL FORCE.** The defendant intentionally participated in an act, contemplating that the life of a person would be taken or intending that lethal force be used in connection with a person, other than one of the participants in the offense, and Donald Lee Allen died as a direct result of the act. Section 3591(a)(2)(C).
 4. **INTENTIONAL ENGAGEMENT IN ACT OF VIOLENCE.** The defendant intentionally and specifically engaged in an act of violence, knowing that the act created a grave risk of death to a person, other than one of the participants of the offense, such that participation in the act constituted a reckless disregard for human life and the victim, Donald Lee Allen, died as a direct result of the act. Section 3591(a)(2)(D).
- B. Statutory Aggravating Factors Enumerated Under 18 U.S.C. § 3592(c).**
1. **PECUNIARY GAIN.** The defendant committed the offense in expectation of the receipt of something of pecuniary value. Section 3592(c)(8).
 2. **SUBSTANTIAL PLANNING AND PREMEDITATION.** The defendant committed the offense after substantial planning and premeditation to cause the death of Donald Lee Allen. Section 3592(c)(9).

3. **MULTIPLE INTENTIONAL KILLINGS IN A SINGLE CRIMINAL EPISODE.** The defendant intentionally killed or attempted to kill more than one person in a single criminal episode. Section 3592(c)(16).
- C. **Other, Non-Statutory, Aggravating Factors Identified Under 18 U.S.C. § 3593(a)(2).**
1. **VICTIM IMPACT.** Donald Lee Allen's personal characteristics and the harmful effect and scope of the instant offenses on the Allen family. 18 U.S.C. § 3593(a)(2) and *Payne v. Tennessee*, 501 U.S. 808, 111 S. Ct. 2597 (1991).
- II. **As to the murder of Robin Williams, as charged in Count Eleven, the Government proposes to prove the following factors as justifying a sentence of death.**
- A. **Statutory Proportionality Factors Enumerated Under 18 U.S.C. § 3591(a)(2)(A).**
1. **INTENTIONAL KILLING.** The defendant intentionally killed Robin Williams. Section 3591(a)(2)(A).
 2. **INTENTIONAL INFLICTION OF SERIOUS BODILY INJURY.** The defendant intentionally inflicted serious bodily injury that resulted in the death of Robin Williams. Section 3591(a)(2)(B).
 3. **INTENTIONAL ACTS TO TAKE LIFE OR USE LETHAL FORCE.** The defendant intentionally participated in an act, contemplating that the life of a person would be taken or intending that lethal force be used in connection with a person, other than one of the participants in the offense, and Robin Williams died as a direct result of the act. Section 3591(a)(2)(C).

4. **INTENTIONAL ENGAGEMENT IN ACT OF VIOLENCE.** The defendant intentionally and specifically engaged in an act of violence, knowing that the act created a grave risk of death to a person, other than one of the participants of the offense, such that participation in the act constituted a reckless disregard for human life, and the victim, Robin Williams, died as a result of the act. Section 3591(a)(2)(D).

B. Statutory Aggravating Factors Enumerated Under 18 U.S.C. § 3592(c).

1. **GRAVE RISK OF DEATH TO ADDITIONAL PERSONS.** The defendant, in the commission of the offenses, or in escaping apprehension for the violation of the offense, knowingly created a grave risk of death to one or more persons in addition to the victim of the offense. Section 3592(c)(5).
2. **SUBSTANTIAL PLANNING AND PREMEDITATION.** The defendant committed the offense after substantial planning and premeditation to cause the death of Robin Williams. Section 3592(c)(9).
3. **MULTIPLE INTENTIONAL KILLINGS IN A SINGLE CRIMINAL EPISODE.** The defendant killed or attempted to kill more than one person in a single criminal episode. Section 3592(c)(16).

C. Other Non-Statutory, Aggravating Factors Identified Under 18 U.S.C. § 3593(a)(2).

1. **VICTIM IMPACT.** Robin Williams' personal characteristics and the harmful effect and scope of the instant offenses on the Williams' family. 18 U.S.C. § 3593(a)(2) and *Payne v. Tennessee*, 501 U.S. 808, 111 S. Ct. 2597(1991).

III. Additional non-statutory aggravating factors applicable to both the murder of Allen, as charged in Counts Seven and Eight, and the murder of Williams, as charged in Count Eleven, identifiable under 18 U.S.C. § 3593(a)(2).

A. **FUTURE DANGEROUSNESS OF THE DEFENDANT.** The defendant, who has committed a pattern of violence towards others, is likely to commit criminal acts of violence in the future which would be a continuing and serious threat to society. *Simmons v. South Carolina*, 114 S. Ct. 2187, 2193 (1994).

1. **Other Acts of Violence.** The defendant has committed, attempted to commit, and/or threatened to commit other acts of violence, in addition to the capital offense(s) committed in this case and the statutory factors alleged in this Notice, including but not limited to one or more of the following:

- a. In or about 1990, Natasha Heard lived with the defendant in Newnan, Georgia. During this co-habitation, Heard and the defendant had two children. Throughout this relationship, the defendant was physically abusive towards Heard. Before giving birth to their daughter, the defendant slammed Heard onto a concrete area. This violent act by the defendant occurred when Heard was six months pregnant. This assault was one of many beatings inflicted by the defendant upon Heard during and after their dating relationship and co-habitation.
- b. On or about May 2, 1992, in Newnan, Georgia, the defendant used a .22 caliber handgun to shoot Anthony Britt. This offense resulted in the defendant's conviction for Pointing a Firearm at Another.

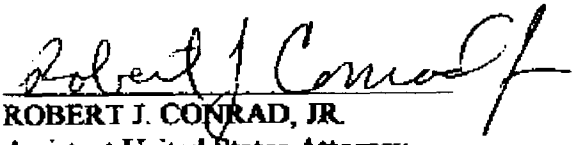
- c. On or about January 23, 1993, in Newnan, Georgia, the defendant used a coat hanger to beat the infant children of Crystal Dennis. This resulted in the defendant's conviction for two counts of Felonious Cruelty to Children. At the time of the beatings, the defendant was in a dating relationship with Dennis. Throughout the course of their dating relationship, the defendant behaved violently and on numerous times assaulted Dennis.
- d. On or about November 9, 1993, the defendant broke into an apartment occupied by Alesha Chambers. Chambers at the time was the defendant's girlfriend. On that date the defendant forcibly entered the residence, removed Chambers and threatened to kill her.
- e. On or about November 12, 1993, the defendant waited for Alesha Chambers at a bus stop in Charlotte, North Carolina. The defendant grabbed Chambers, held a knife to her throat and threatened to kill her. The defendant was convicted in the Superior Court of Mecklenburg County for the crime of Felonious Restraint.
- f. On or about March 15, 1994, the defendant used a baseball bat to assault Alesha Chambers.
- g. On or about March 25, 1994, the defendant forced Alesha Chambers to leave her residence, sexually assaulted Chambers and threatened to kill her.

2. Low Rehabilitative Potential. As a result of his prior criminal conduct and convictions, the defendant has been incarcerated and served probationary sentences. The efforts and treatments to rehabilitate the defendant and/or deter him from violent conduct have failed.

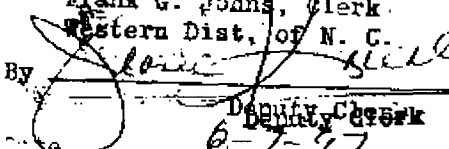
B. **THE DEFENDANT KILLED TWO PEOPLE.** The defendant killed Donald Lee Allen and Robin Williams. This aggravating factor is listed in the alternative to the aggravating factor under Section 3592(c)(16) previously referenced in Sections I and II of this Notice.

RESPECTFULLY SUBMITTED, this the 7 day of August, 1997.


MARK T. CALLOWAY
United States Attorney


ROBERT J. CONRAD, JR.
Assistant United States Attorney
Chief, Criminal Division


THOMAS G. WALKER
Assistant United States Attorney

Certified to be a true and correct copy of the original.
District Court
Frank G. Johns, Clerk
Western Dist. of N. C.
By: 
Deputy Clerk
Date: 8-7-97

CERTIFICATE OF SERVICE

I certify that I have this day served a copy of the above upon the defendant by preparing a copy of the same, together with a copy of this certificate of service, for mailing to the defendant. Upon the filing of this pleading and certificate with the Court, a "file stamped" copy of such documents will be placed in an envelope, with adequate postage thereon, in an official depository of the United States Postal Service addressed to:

George V. Laughrun, II
Goodman, Carr, Nixon, Laughrun & Levine, P.A.
Attorneys at Law
301 S. McDowell Street, Suite 602
Charlotte, North Carolina 28204

Paul J. Williams
Attorney at Law
301 S. McDowell Street, Suite 801
Charlotte, North Carolina 28204

being the address of counsel of record for the defendant. In the event these documents are not served upon the defendant in the manner and on the date described herein, the United States will immediately notify the Court and the defendant of the factually correct method of service of these documents.

August 7, 1997

Elizabeth C. McCluney
ELIZABETH C. MCCLUNEY
Legal Secretary